REMARKS

I. Introduction

In response to the Office Action dated January 29, 2007, Applicants have amended claim 1 to more particularly point out and distinctly claim the subject matter of the invention. Claims 3 and 4 have been canceled. In view of the foregoing amendments and the following remarks, Applicants respectfully submit that all pending claims are in condition for allowance.

II. Claim Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1 – 3 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by JP-2001-216883 ("the '883 application"). Claims 4 – 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the '883 application in view of U.S. Patent No. 6,991,752 to Nagayama and U.S. Patent No. 6,605,386 to Kasamatsu. Applicants traverse these rejections for at least the following reasons.

Claim 1 recites, among other things, a battery pack comprising a lithium ion secondary battery comprising a positive electrode and a negative electrode, and a current interrupting device for protecting said secondary battery, said current interrupting device comprising a recoverable device and a non-recoverable device, said non-recoverable device having an operating temperature of not less than 130°C and not greater than 150°C, wherein said positive electrode comprises a composite oxide containing lithium, cobalt and magnesium. The composite oxide provides excellent stability during overcharge. Furthermore, when the operating temperature of the non-recoverable device is between 130°C and 150°C, the safety is improved.

The Examiner admits that the '883 application discloses a fuse having an operating temperature of 90°C. Thus, the '883 application fails to disclose a non-recoverable device having an operating temperature of not less than 130°C and not greater than 150°C as recited in claim 1. Nagayama and Kasamatsu also fail to disclose this feature. Accordingly, as anticipation under 35 U.S.C. § 102 requires that each element of the claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference, *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983), and at a minimum, the '883 application fails to disclose at least those features described above, it is clear that the '883 application does not anticipate independent claim 1.

Claims 2, 5, and 6 depend from claim 1. Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as independent claim 1 is patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

III. Conclusion

In view of the above amendments and remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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